"After the owner, beneficial owner, or person entitled to any of the following named moneys or property shall be and remain unknown, or the whereabouts thereof shall have been unknown for the period of seven successive years, such money or property shall be escheatable to the Commonwealth * * * with interest actually accrued thereon to the date of the decree for the escheat
7 of the same, namely * * * '(b) Any moneys, estate, or effects paid into or deposited in any court of this Commonwealth, or in any Federal Court in and for any District within the Commonwealth, or in the custody of any officer of any such court.'"

That the said Act of 1921 further provides: "After any moneys held by any person, bank, trust company, or corporation, or by any association, limited partnership or copartnership, belonging to any other person, the escheat of which is not otherwise provided for in this section, has been and remained unclaimed, by the person for whom the same is held, for the period of seven or more successive years, such moneys or property shall be escheatable to the Commonwealth."

17. That the decree of distribution in the said matter of Alice Frances Brown v. Penna. Canal Company was entered on October 4, 1917; that the said moneys were paid into the Registry of the Court on the 22nd day of January 1919.

18. That after the prayer for distribution of the unclaimed balance among the bondholders was denied, the said moneys were paid into the Treasury of the United States on the 30th day of June 1926.

19. That the said moneys have been unclaimed since the said date of decree of distribution on October 4th, 1917, and still remain unclaimed.

20. That by virtue of the provisions of the aforementioned Acts of Assembly of the Commonwealth of Pennsylvania the said moneys are escheatable to the Commonwealth of Pennsylvania.

8 21. That on April 17th, 1934, the Commonwealth of Pennsylvania, by Philip Klein, Escheator, filed his Petition in the United States District Court for the Eastern District of Pennsylvania, as of March Term, 1934, No. 8123, praying for the escheat of the moneys hereinabove described, the said petition praying that the said Court enter a finding that an escheat of the said moneys has occurred and praying further for an order directing the payment of the said moneys to the Commonwealth of Pennsylvania.

22. That due notice of the presentation of the said petition was given to the United States District Attorney for the Eastern District of Pennsylvania, and the said United States District Attorney filed an objection to the jurisdiction of the United States District Court.

23. That on September 6th, 1934, the Honorable Oliver B. Dickinson, Judge of the United States District Court filed an Opinion setting forth that the said Court has no jurisdicton to enter a Decree declaring escheat of the said moneys.

24. That on October 17th, 1934, the said Honorable Oliver B. Dickinson entered an order denying the prayer of the Commonwealth of Pennsylvania for the escheat of the said moneys, without prejudice.

25. That a decree of escheat is necessary in order to enable your Petitioner to proceed further in the United States District Court to recover the moneys to which the Commonwealth of Pennsylvania is entitled by virtue of the facts hereinbefore set forth.

Wherefore your petitioner prays that

1. That a day be set for a hearing upon this petition.

2. That a preliminary order be entered directing that service of a copy of this petition and notice of the day set for the hearing hereon be made upon Charles D. McAvoy, United States Attorney for the Eastern District of Pennsylvania.

3. That after said hearing the Court shall enter a finding that an escheat has occurred of all the said unclaimed moneys except

(a) such moneys as shall appear at the said hearing to have been claimed by or paid to persons lawfully entitled thereto between the filing of this petition and the date of the said hearing:

(b) such moneys as may be claimed at the said hearing by persons lawfully entitled thereto.

4. That the said findings by the Court shall be accompanied by an order empowering and directing that the Treasurer of the United States pay the said moneys to Philip Klein, Escheator of the Commonwealth of Pennsylvania, for and on behalf of the Commonwealth of Pennsylvania upon the filing of a bond to the Commonwealth of Pennsylvania with sufficient security to be approved by your Honorable Court, conditioned for the faithful performance by the said Philip Klein of his duties as Escheator and for the faithful accounting and payment over to the State Treasury of the Commonwealth of Pennsylvania, through the Department of Revenue of the said Commonwealth, of the moneys so found to be escheated which come into your petitioner's possession as Escheator.

And your petitioner will ever pray, etc.

PHILIP KLEIN, *Petitioner.*

[*Duly sworn to by Philip Klein; jurat omitted in printing.*]

Exhibit A to petition

In the Name and by the Authority of the Commonwealth of Pennsylvania

Whereas, in and by an act of the General Assembly of said Commonwealth, approved on the second day of May, one thousand eight hundred and eighty-nine (P. L. Page 66), it is enacted "That whensoever by information or otherwise the Auditor General of the Commonwealth shall become aware of the fact that any property, real or personal, hath escheated or is supposed to have escheated to

11 the Commonwealth under the provisions of this act, he shal
appoint by commission, under his hand and the seal of hi
office, some suitable person, resident in the county where he shal
have reason to suppose that the escheated property or the greater par
thereof is situate, to act as Escheator of said property, which sai
Escheator shall have the powers and duties and shall be entitled to th
fees and rewards hereafter nominated and specified in this act"
and it is therein further enacted that the Escheator so appointe
when duly commissioned, shall apply by petition to the Court hav
ing Jurisdiction in the premises to hear and determine whether a
escheat has occurred or not, setting forth in his petition the fact o
his appointment and the nature and character of the alleged eschea
together with other facts and information required by said act.

And whereas, Section 205 of "The Fiscal Code" of 1929 provide
"The Department of Revenue shall exercise all of the powers, an
perform all of the duties heretofore exercised and performed by th
Auditor General, in the collection or recovery of property, both rea
or personal, which under the Laws of this Commonwealth, shall b
escheatable thereto for any reason"

"It may appoint escheators----------"

And whereas, also information has been given according to law
by Michael Edelman, Esq., of Philadelphia, Pennsylvania, that cer
tain moneys paid into and deposited in the United States Distric
Court for the Eastern District of Pennsylvania and now in th
Registry of the said court have escheated to the Commo
12 wealth, and that certain other moneys deposited in the Trea
ury of the United States have likewise escheated to th
Commonwealth.

Now, know all men by these presents, that I, Leon D. Metzge
Secretary of Revenue of the Commonwealth of Pennsylvania, b
virtue of the authority aforesaid, have appointed, and by these pre
ents do appoint, Philip Klein, Esquire, of 213 S. Broad Street, Phil
delphia, Penna., to be Escheator of said property, with full pow
and authority to act in the premises as the law directs, and to exe
cise all the powers appertaining to said appointment as Escheato
and to do and to perform all such duties as are required by law to b
done, in pursuance of the provisions of said act of May second, o
thousand eight hundred and eighty-nine, entitled "An act definin
and regulating escheats in cases where property is without a lawf
owner and providing for more convenient proceedings relative
the same," and said "The Fiscal Code."

Given under my hand and the seal of the Secretary of Reven
of Pennsylvania, this Seventh day of February, one thousand ni
hundred and thirty-four.

LEON D. METZGER,
Secretary of Revenue.

In Court of Common Pleas

Motion to dismiss for want of jurisdiction

And now, this 13th day of February 1935, the United States of America, by Charles D. McAvoy, Esq., United States Attor-
13 ney for the Eastern District of Pennsylvania appears specially and moves the Court to dismiss the above case for the following reasons:

(a) The Common Pleas Court of Philadelphia for the State of Pennsylvania has no jurisdiction to entertain the Petition above mentioned in that this Court cannot exercise jurisdiction as the state statutes are void insofar as they attempt to escheat moneys in the custody of the United States or in the custody of its Court.

(b) The funds sought to be escheated are in the Treasury of the United States as is alleged in the Petition and therefore are not within the jurisdiction of the Courts of Pennsylvania.

(c) The state law confers no jurisdiction upon any state court for the escheat of funds in the Treasury of the United States.

CHARLES D. McAVOY,
United States Attorney.

In Court of Common Pleas

Order of court sur petition

Feb. 21, 1935, Prayer of petition refused.

R. E. L., J.

In Court of Common Pleas

Opinion sur petition for escheat

Filed July 18, 1935

LAMBERTON, J.: Philip Klein, as Escheator of the Commonwealth of Pennsylvania, filed his Petition in which he averred that
14 on May 2, 1911, a proceeding was filed in the United States District Court for the Eastern District of Pennsylvania, as of April Sessions 1911, No. 677, under the caption of Alice Frances Brown, et al. v. Pennsylvania Canal Company, Pennsylvania Railroad Company, et al; that in said proceeding, a Bill of Complaint was filed asking that The Pennsylvania Railroad Company be required to pay the principal of certain bonds to the owners thereof; that an Order was duly made by Honorable Oliver B. Dickinson, Judge of said Court, in favor of the bondholders; that the owners of certain bonds could not be located, and the Court ordered the moneys payable to such bondholders to be paid into the Registry

of the United States District Court for the Eastern District of Pennsylvania, which was accordingly done on April 22, 1919; that the moneys remaining in the Registry of the Court were, on June 30, 1926, paid into the Treasury of the United States under the provisions of an Act of Congress providing as follows:

"In every case in which the right to withdraw money so deposited (in a depositary of the United States) has been adjudicated or is not in dispute, and such money has remained deposited for at least five years unclaimed by the person entitled thereto, it shall be the duty of the judge or judges of the said Court, or its successor, to cause such money to be deposited in the Treasury of the United States in the name and to the credit of the United States. Any person or persons, or any corporation or company, entitled to such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States Attorney, and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant."

That said money still remains unclaimed, and is escheatable to the Commonwealth of Pennsylvania under the Acts of Assembly of said Commonwealth.

The Prayer of the Petition is (1) that a hearing be held and that the Court shall enter a finding that an escheat has occurred of said unclaimed moneys, except

"(a) such moneys as shall appear at the said hearing to have been claimed by or paid to persons lawfully entitled thereto between the filing of this petition and the date of the said hearing;

(b) such moneys as may be claimed at the said hearing by persons lawfully entitled thereto."

and (2) that this court shall make an Order empowering and directing that the Treasurer of the United States pay the said moneys to Philip Klein for and on behalf of the Commonwealth of Pennsylvania.

The United States Attorney for the Eastern District of Pennsylvania filed a Motion to dismiss. The matter came up for hearing, and on February 21, 1935, we entered an Order refusing the Prayer of the Petition. Subsequently, on the representation of counsel that additional legislation was pending at Harrisburg, we allowed a Rule for a reargument, which is the matter now before us. Counsel was apparently of the opinion that the Petition was discharged for purely procedural reasons, but this was not the case. The difficulty is fundamental. We might discuss the principle of escheat, procedure and sovereignty at great length, but this would serve no useful purpose. Our objections are definite and fundamental and can be very briefly stated.

In the first place, the money in question is in the Treasury of the United States. There is no Act of Assembly which provides for the escheat of such moneys to the Commonwealth of Pennsylvania.

In the second place, if such an Act were in existence, it would be

invalid. The right to take property by escheat is inherent in every sovereign, but is limited to property within the domain of that sovereign. Pennsylvania is a sovereign state, but so is the United States of America. When money is in the Treasury of the United States, it is within the domain of the United States of America and cannot be escheated to the Commonwealth of Pennsylvania.

In the third place, if this be regarded as an action to escheat moneys under the control of the United States District Court, any enabling legislation is void, because the United States District Court was created by an Act of Congress, and can be controlled only by Congress. The State of Pennsylvania is powerless to control or direct the actions of a District Court of the United States, even though that District Court be within the geographical bounds of the State of Pennsylvania.

For the above reasons, this Petition cannot prevail. It probably would have been better to have sustained the Motion to dismiss, rather than to have discharged the Petition, but the effect is the same.

And now, to wit, this 18th day of July 1935, the Rule for a reargument is discharged.

By the Court:

(Sgd.) LAMBERTON, *J.*

17 In Court of Common Pleas

Amended petition for escheat of moneys deposited in and now in the the custody of the Treasury of the United States

To the Honorable, the Judges of the said Court:

The petition of the Commonwealth of Pennsylvania by Philip Klein, Escheator, respectfully represents:

1. That on the 7th day of February 1934, Philip Klein was appointed Escheator of the Commonwealth of Pennsylvania by Commission issued by Leon D. Metzger, Secretary of Revenue of the Commonwealth of Pennsylvania, under the seal of the Department of Revenue. A true and correct copy of this Commission is attached to the original petition filed in this case.

2. That by the said Commission full power and authority are granted to the said Philip Klein to act in behalf of the Commonwealth of Pennsylvania and to exercise all of the powers pertinent to the said appointment as Escheator, and to do and perform all of the duties required by law to be done for the purpose of procuring the Escheat to the Commonwealth of Pennsylvania of moneys deposited in the Treasury of the United States, and escheatable to the Commonwealth of Pennsylvania.

3. That the moneys sought to be escheated as hereinafter set forth arise out of the proceeding instituted in the United States
18 District Court for the eastern District of Pennsylvania by one Alice Frances Brown and others.

4. That on May 2nd, 1911 a proceeding was filed in the United States District Court for the Eastern District of Pennsylvania, as of April Sessions, 1911, No. 677 under the caption of Alice Frances Brown et al. v. Pennsylvania Canal Company, Pennsylvania Railroad Company, et al.

5. That in the said proceeding a Bill of Complaint was filed by the plaintiff Alice Frances Brown setting forth that she was the owner of certain bonds issued by the Pennsylvania Canal Company, the said bonds being secured by a mortgage upon certain real estate of the Pennsylvania Canal Company; that she instituted this proceeding on behalf of herself and the owners of all the other bonds secured by the said mortgage; that the assets covered by the said mortgage had been improperly transferred to the Pennsylvania Railroad Company to the detriment of the bondholders; that the said assets were chargeable with the payment of the said bonds and that by reason of the conduct of the Pennsylvania Canal Company and the Pennsylvania Railroad Company, the latter company was bound to pay the principal of said bonds; the Bill of Complaint provided for relief in the form of an order upon the Railroad Company to pay the said principal of the bonds to the owners thereof.

6. That in pursuance of the prayer of the said Bill of Complaint, a Decree was entered by the Honorable Oliver B. Dickson, Judge of the said District Court against the Pennsylvania Railroad Company and in favor of the bondholders for the full amount of the said bonds.

19 7. That by the terms of the said Decree it was provided that the bondholders should file their claims and that payment should then be made by the Pennsylvania Railroad Company.

8. That in pursuance of the said decree most of the owners of the said bonds filed their claims, but a number of bondholders failed to file.

9. That a Master was appointed to determine the right to payment by virtue of the ownership of the said bonds and the Pennsylvania Railroad Company made payment to all claimants who filed.

10. That the owners of a number of bonds issued by the Pennsylvania Canal Company could not be located after extensive search and advertising in various periodicals.

11. That by reason of the fact that the owners of such bonds could not be found, the Court entered an order directing the payment of the moneys payable to the owners of such bonds into the registry of the United States District Court for the Eastern District of Pennsylvania.

12. That further search was thereafter made to locate the owners of the said bonds and the effort was without result. That a petition was thereafter filed on behalf of those owners of the bonds who had filed their claims asking that the unclaimed moneys should be divided among them.

13. That the Court entered a decree denying the prayer of the said etition, setting forth that the moneys allotted to each bond were the property of the owner of such bonds, and that the title thereto could not be divested in favor of the other bondholders or of the stockholders.

14. That after a lapse of five years, in accordance with the Act Congress in such case made and provided (R. S. 851) the unaimed moneys were deposited in accordance with the provisions of ection 851 of the said Revised Statutes to the credit of the Treasry of the United States, such deposit being made by a bookkeeping ntry in the Federal Reserve Bank in the City of Philadelphia, ansferring the said moneys from the account of the Registry of the nited States District Court for the Eastern District of Pennsylania to the account of the Treasury of the United States.

15. That by Section 852 of the Revised Statutes, it is further proded that any person or corporation or company entitled to such oney may on petition to the court from which the money was ceived and upon full proof of right thereto, obtain an order of ourt directing the payment of such money to the claimant.

16. That the Act of General Assembly of the Commonwealth of ennsylvania, approved June 29th, 1935, states,

"Section II. Whenever any money, estate, or effects shall have een or shall hereafter be paid into or deposited in or be under the ontrol * * * of any court of the United States in and for any istrict within this Commonwealth, or shall be in the custody of any depositary, registry, or of any receiver, clerk, or other officer of any of said courts, and the rightful owner or owners thereof shall have been or shall be unknown for the space of ven years, the same shall escheat to the Commonwealth."

17. That the decree of distribution in the said matter of Alice rances Brown v. Penna. Canal Company was entered on October h, 1917; that the said moneys were paid into the Registry of the ourt on the 22nd day of January 1919.

18. That after the prayer for distribution of the unclaimed balance nong the bondholders was denied, the said moneys were deposited to e credit of the Treasury of the United States on June 30th, 1926.

19. That the said moneys have been unclaimed since the said date decree of distribution on October 4th, 1917, and still remain unaimed.

20. That by reason of the provisions of the aforesaid Act of Asmbly of the Commonwealth of Pennsylvania, the said moneys have cheated to the Commonwealth of Pennsylvania.

21. That on April 17th, 1933, the Commonwealth of Pennsylvania, Philip Klein, Escheator, filed his Petition in the United States strict Court for the Eastern District of Pennsylvania, as of March rm, 1934, No. 8123, praying for the escheat of the moneys hereinove described, the said petition praying that the said Court enter a

finding that an escheat of the said moneys has occurred and praying further for an order directing the payment of the said moneys to the Commonwealth of Pennsylvania.

22 22. That due notice of the presentation of the said petition was given to the United States District Attorney for the Eastern District of Pennsylvania, and the said United States District Attorney filed an objection to the jurisdiction of the United States District Court.

23. That on September 8th, 1934, the Honorable Oliver B. Dickinson, Judge of the United States District Court filed an Opinion setting forth that the said Court has no jurisdiction to enter a Decree declaring escheat of the said moneys.

24. That on October 17th, 1934, the said Honorable Oliver B. Dickinson entered an order denying the prayer of the Commonwealth of Pennsylvania for the escheat of the said moneys, without prejudice.

25. That a decree of escheat is necessary in order to enable your Petitioner to proceed further in the United States District Court to recover the moneys to which the Commonwealth of Pennsylvania is entitled by virtue of the facts hereinbefore set forth.

26. That the aforementioned Act of June 29th, 1935, provides further—

"Section V. Whenever as escheat has occurred or shall occur of any money or property deposited in the custody of or under the control of any Court of the United States in and for any District within this Commonwealth, or in the custody of any depositary, clerk, or other officer of such court, the court of common pleas of the county in which such court of the United States sits shall have juris-

23 diction to ascertain if an escheat has occurred, and to enter a judgment or decree of escheat in favor of this Commonwealth."

Wherefore your petitioner prays that

1. That a day be set for a hearing upon this petition.

2. That a preliminary order be entered directing that service of a copy of this petition and notice of the day set for the hearing hereon be made upon Charles D. McAvoy, United States Attorney for the Eastern District of Pennsylvania.

3. That after said hearing the Court shall enter a finding that an escheat has occurred of all of the said unclaimed moneys except

(a) such moneys as shall appear at the said hearing to have been claimed by or paid to persons lawfully entitled thereto between the filing of this petition and the date of the said hearing;

(b) such moneys as may be claimed at the said hearing by persons lawfully entitled thereto.

And your petitioner will ever pray, etc.

PHILIP KLEIN, *Petitioner.*

[Duly sworn to by Philip Klein; jurat omitted in printing.]

24 In Court of Common Pleas

Motion to dismiss for want of jurisdiction

And now, this 31st day of December 1935, the United States of America, by Charles D. McAvoy, Esq., United States Attorney for the Eastern District of Pennsylvania appears specially and moves the Court to dismiss the above case for the following reasons:

(a) The Common Pleas Court of Philadelphia for the State of Pennsylvania has no jurisdiction to entertain the Petition above mentioned in that this Court cannot exercise jurisdiction as the state statutes are void insofar as they attempt to escheat moneys in the custody of the United States or in the custody of its court.

(b) The funds sought to be escheated are in the Treasury of the United States as is alleged in the Petition and therefore are not within the jurisdiction of the Courts of Pennsylvania.

(c) The state law confers no jurisdiction upon any state court for the escheat of funds in the Treasury of the United States.

CHARLES D. McAVOY,
United States Attorney.

25 In Court of Common Pleas

Opinion sur motion to dismiss

ALESSANDRONI, J.: This matter has been previously before us, and was disposed of in an opinion by Lamberton, J., filed July 18, 1935. In that opinion the facts were fully stated and need not here be repeated. Subsequently, on the representation of counsel for the Petitioner that new facts had been discovered, leave was granted to file an Amended Petition, and this was accordingly done. The United States Attorney has again filed a Motion to Dismiss.

The original Petition for escheat recited that the moneys had been "deposited in the custody of the Treasury of the United States." The Amended Petition repeats this averment, but amplifies it by stating "such deposit being made by a bookkeeping entry in the Federal Reserve Bank in the City of Philadelphia, transferring the said moneys from the account of the Registry of the United States District Court for the Eastern District of Pennsylvania to the account of the Treasury of the United States." This is the only change of any substance made by the Amended Petition.

We do not believe the Amended Petition improves the position of the Petitioner. It avers that the transfer of the money was by a bookkeeping entry. In these days of banking facilities, it is seldom that a transfer is made in any other way, and a transfer so made is just as complete and effectual as if gold coin (there being such in the year when this transfer was made) were bodily shipped from
26 one place to another. Therefore, the three reasons given in the opinion of Judge Lamberton still preclude petitioner from

maintaining this action. Even if transfer by bookkeeping entry be considered no transfer at all, which is unthinkable, the third reason given by Judge Lamberton would still present an insuperable barrier to the maintenance of this action.

And now, to wit, this 21st day of January, 1936, the Motion of Charles D. McAvoy, United States Attorney, to dismiss the Petition in the above case is granted.

By the Court:

(Sgd.) ALESSANDRONI, *J.*

In Court of Common Pleas

Order of court sur amended petition

And now, to wit, this 21st day of January, 1936, the Motion of Charles D. McAvoy, United States Attorney, to dismiss the Petition in the above case is granted.

By the Court:

(Sgd.) ALESSANDRONI, *J.*

In Court of Common Pleas

Final decree

(For Purpose of First Appeal)

And now, to wit, this 21st day of January A. D. 1936, this cause having come on before the Court for hearing on Petition, Amended Petition and Motion to Dismiss,

27 It is Ordered and Decreed: That the Motion to Dismiss is hereby sustained and that the Petition as Amended be and the same is hereby Dismissed.

Exception allowed to the Petitioner.

By the Court:

(Sgd.) ALESSANDRONI, *J.*

In Supreme Court of Pennsylvania

Opinion

Filed June 26, 1936

(Reported in 322 Pa. 481)

LINN, J.: The Commonwealth, by Klein, its escheator, filed this petition averring that in certain equity proceedings in the District Court of the United States for the Eastern District of Pennsylvania, (At April Sessions, 1911, No. 677, Alice Frances Brown et al. v. Pennsylvania Canal Company and others. See also Rea v. Pennsylvania Canal Company, 245 Pa. 589, 91 A. 1053) certain sums

were found to be due and payable to described bondholders; that some creditors, so sound to be entitled, had not claimed payment, whereupon the court directed that such unclaimed funds be paid into its registry; that after the lapse of five years (in accordance with the Act of May 29, 1920, C. 214, Section 1, 41 Stat. 654, 28 USCA section 851) the unclaimed moneys were deposited to the credit of the Treasury of the United States. The petition averred that "such deposit (was) made by a bookkeeping entry in the Fed-
28 eral Reserve Bank in the City of Philadelphia, transferring the said moneys from the account of the Registry of the United States District Court for the Eastern District of Pennsylvania to the account of the Treasury of the United States." The petition also set forth that the Act of Congress (Act of March 3, 1911, C. 224, 36 Stat. 1088, 28 USCA section 852) provided "Any person or persons or any corporation or company entitled to any such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States attorney and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders."

The Commonwealth averred that the unclaimed money escheated to it; that in April 17, 1934, a petition on its behalf was filed in the District Court (to March Term, 1934, No. 8123) for an order directing payment, as an escheat, to the Commonwealth; and that on September 6, 1934, an opinion was filed by Dickinson, J., dismissing the petition for want of jurisdiction and without prejudice.

Petitioner averred that a decree of escheat was necessary to qualify its escheator under the decision of the District Court and the Act of Congress to present, in that Court, the claim of the Commonwealth as the person entitled to the escheat.

Notice of the petition was given to the United States Attorney for the Eastern District of Pennsylvania; he appeared specially and moved to dismiss for want of jurisdiction, assigning the following reasons:

29. "(a) The Common Pleas Court of Philadelphia for the State of Pennsylvania has no jurisdiction to entertain the Petition above mentioned in that this court cannot exercise jurisdiction as the state statutes are void insofar as they attempt to escheat moneys in the custody of the United States or in the Custody of its court.

"(b) The funds sought to be escheated are in the Treasury of the United States as is alleged in the Petition and therefore are not within the jurisdiction of the Courts of Pennsylvania.

"(c) The state law confers no jurisdiction upon any state court for the escheat of funds in the Treasury of the United States."

The petition was dismissed and the Commonwealth has appealed.

The Act of May 2, 1889, P. L. 66, and amendments and supplements

provide for escheat proceedings. In this case the Commonwealth depends on the following amendment of June 28, 1935, P. L. 472: "Whenever an escheat has occurred, or shall occur, of any money or property deposited in the custody of, or under the control of, any court of the United States in and for any district within this Commonwealth, or in the custody of any depository, clerk, or other officer of such court, the court of common pleas of the county in which such court of the United States sits, shall have jurisdiction to ascertain if an escheat has occurred, and to enter a judgment or decree of escheat in favor of the Commonwealth."

30 We all agree that the learned court erred in dismissing the petition for want of jurisdiction. The power to declare an escheat is in the Commonwealth. It is a power that was not delegated to the federal government, though its exercise by a State may be restricted in the fields where the power of Congress is exclusive; cf. First National Bank v. State of California, 262 U. S. 366. "The regulation of the title and devolution of property within its limits is within the control and jurisdiction of the State": Cunnius v. Reading School District, 206 Pa. 469; 50 A. 16. The property under discussion is a debt payable by a debtor who deposited the money for distribution pursuant to a decree in an equity proceeding pending in the District Court. The money is still held under its control, pursuant to the Act of Congress, for the purpose for which it was paid. "That the debt due the absentee by the School District resulting from the establishment of her dower was within the jurisdiction of the state authority is clear": Cunnius v. Reading School District, 198 U. S. 458, 467. As the Commonwealth merely asks for a declaration of escheat and does not desire an order of payment directed to any federal agency there would seem to be no objection to considering the proceedings as in personam: cf. Security Bank v. California, 263 U. S. 282, 287.

The United States Attorney does not claim that the property has escheated to the federal government or that the federal government can escheat it. His contention is that the State has no power "to escheat moneys presently in the Treasury of the United States." It is well settled that the State has power to take possession of unclaimed property as an escheat. Security Savings Bank v. Cal-

31 ifornia, 263 U. S. 282, supra; Com. v. Dollar Savings Bank, 259 Pa. 138; 102 A. 569; Germantown Trust Co. v. Powell, 265 Pa. 71; 108 A. 441. It may be conceded that the State cannot take possession of property in the custody of the federal government, but that fact need not prevent the judicial determination by the State of the succession to unclaimed property within its borders. The argument made for the Commonwealth concedes that the State court can make no order on the federal treasury or on any other representative of the federal government, requiring the delivery of the property to the escheater; but the contention is that as the District Court, in the proceeding brought by the escheater and referred to above, held

hat the court lacked power to declare an escheat (The learned dis-
rict judge said: "The act of congress which makes these moneys
ubject to the award of this Court does so only in favor of 'any
erson or persons, corporation or company' who can lay successful
laim of ownership thereto. Assuming arguendo the state to be
ithin this Act it is able as yet to show no title to these moneys.
nder the facts it may or may not be able to secure a judgment to
scheat but it has not done so. Counsel for petitioner recognize this
nd hence ask this court to enter such a judgment. Have we the
urisdictional power to so do? * * * The real position of the
etitioner is that the State Statutes have conferred jurisdicion upon
o State Court to enter Judgment to escheat these moneys but they
ave conferred it upon this court. This they cannot do, and we in
onsequence have no such power. * * * The State has no title
nd no title by escheat can be acquired otherwise than by a com-
pliance with these statutes. When the petitioner is able to
2 show title to these moneys it will then be our duty to pass judg-
ment upon the title set up.") and dismissed his petition with-
ut prejudice, this proceeding in the State Court was necessarily
nstituted to determine the fact of escheat, and, the fact being found,
o enable the Commonwealth then to present its claim to the District
ourt in control of the fund pursuant to the Act of Congress. In the
ircumstances, therefore, we think the court should have proceeded
ith the case and should have made such determination as the evi-
ence may require, and if an escheat were found, to have restricted
he enforcement of its order to the proper presentation of the Com-
nonwealth's claim in the District Court to enable that court to
etermine whether payment should be made to the Commonwealth.
uch an order would seem to be within the following language of the
hief Justice in United States v. Bank of New York and Trust Com-
any, 296 U. S. 463: "This principle is applied in the discharge of the
ng recognized duty of this court to give effect to such 'methods of
rocedure as shall serve to conciliate the distinct and independent
ribunals of the States and of the Union, so that they may cooperate
s harmonious members of a judicial system coextensive with the
nited States.' Taylor v. Carryl, 20 How. 583, 595." See, too, Ter-
itory of Alaska v. First Nat. Bank, 22 F. (2d) 377; same v. same,
1 F. (2d) 186.

The order apepal from is reversed and the record is remitted
or further proceedings.

he Supreme Court of Pennsylvania,
Eastern District, City and County of Philadelphia, ss.

The Commonwealth of Pennsylvania

*o the Judges of the Court of Common Pleas No. 5, County of Phila-
delphia. Greeting:*

Whereas, By virtue of our Writ of Certiorari from our Supreme
ourt of Pennsylvania for the Eastern District, returnable in the

same Court on the third Monday of April in the year of our Lord one thousand nine hundred and thirty-six, a record was brought into the same Court upon appeal by Commonwealth of Pennsylvania by Philip Klein, Escheator, from your . . . decree . . . made in the matter of . . . No. 1820 December Term, 1934. In the matter of: Escheat of Moneys in Custody of United States Treasury . . . And it was so proceeded in our said Supreme Court, that the following judgment was made, to wit;

The order appealed from is reversed and the record is remitted for further proceedings, . . . And the record proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of the General Assembly in such case made and provided) ordered by the said Supreme Court to be remitted to the . . . Court . . . Common Pleas No. 5 . . . for the County of . . . Philadelphia . . . aforesaid, as well for execution or otherwise as to justice shall appertain. Wherefore we here remit you the record of the judgment aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness, the Honorable John W. Kephart, Doctor of Laws, Chief Justice of our said Supreme Court, at Philadelphia, the . . . 6th . . . day of . . . July in the year of our Lord one thousand nine hundred and thirty.

EDNA W. MIXSELL,
Deputy Prothonotary.

34 In Court of Common Pleas

Answer of the United States of America to amended petition for escheat of moneys deposited in and now in the custody of the Treasury of the United States of America

The United States of America, by Charles D. McAvoy, Esq., United States Attorney for the Eastern District of Pennsylvania, makes answer to the Amended Petition of the Commonwealth of Pennsylvania, by Philip Klein, Escheator, as follows:

1. The allegations set forth in paragraph one of the complainant's petition are admitted.

2. For answer to the allegations contained in paragraph two of the complainant's petition, it is admitted that the said commission issued by Leon D. Metzger, Secretary of Revenue of the Commonwealth of Pennsylvania, gives full authority to the said Philip Klein, Escheator, to exercise all powers pertinent to his appointment; it is denied, as alleged in said commission, which is made a part of the complainant's petition, that certain moneys now in the registry of the court and other moneys deposited in the Treasury of the United States, have escheated to the Commonwealth of Pennsylvania.

3. The allegations set forth in paragraph three of the complainant's petition are admitted.

4. The allegations set forth in paragraph four of the complainant's petition are admitted.

35 5. The allegations set forth in paragraph five of the complainant's petition are admitted.

6. The allegations set forth in paragraph six of the complainant's petition are admitted.

7. The allegations set forth in paragraph seven of the complainant's petition are admitted.

8. The allegations set forth in paragraph eight of the complainant's petition are admitted.

9. The allegations set forth in paragraph nine of the complainant's petition are admitted.

10. The allegations set forth in paragraph ten of the complainant's petition are admitted.

11. The allegations set forth in paragraph eleven of the complainant's petition are admitted.

12. It is denied that search was made to locate the owners of said bonds and the effort was without result, in that as late as December 10, 1935, Sophy Jane Russell, under an appropriate Decree by Judge Oliver B. Dickinson of the United States District Court for the Eastern District of Pennsylvania, was awarded the sum of $1,794.20 as a person entitled to the proceeds of said bonds. Further, it is admitted that a petition was filed on behalf of the bondholders who had filed their claims, asking for a division of the unallocated moneys amongst them.

13. The allegations set forth in paragraph thirteen of the complainant's petition are admitted.

14. For answer to the allegation contained in paragraph fourteen of the complainant's petition, it is admitted that the unclaimed

36 moneys were deposited in the Treasury of the United States, but it is denied that said deposit was made by a bookkeeping entry in the Federal Reserve Bank of Philadelphia transferring the said moneys from the account of the Registry of the United States District Court for the Eastern District of Pennsylvania, to the account of the Treasury of the United States; on the contrary, it is averred that said deposit in the Treasury of the United States was full and complete and made in accordance with the practice and custom of the Treasury Department and that the Treasury of the United States has full and complete control of said funds.

15. The allegations set forth in paragraph fifteen of the complainant's petition are admitted.

16. The allegations set forth in paragraph sixteen of the complainant's petition are admitted.

17. The allegations set forth in paragraph seventeen of the complainant's petition are admitted.

18. The allegations set forth in paragraph eighteen of the complainant's petition are admitted.

19. The allegation contained in paragraph nineteen of complainant's petition is denied and for further answer it is averred that as

recent as December 10th, 1935, Judge Oliver B. Dickinson of the United States District Court for the Eastern District of Pennsylvania by appropriate decree, awarded $1,794.20 to Sophy Jane Russell as a person entitled to share in this fund.

20. The allegation contained in paragraph twenty of the
37 complainant's petition is denied and for further answer it is averred that the Court of Common Pleas of Philadelphia County has neither the right nor the power to declare and escheat of these funds in the Treasury of the United States, and any statute of the Commonwealth of Pennsylvania attempting to so empower the said Court of Common Pleas of Philadelphia County so to do, is unconstitutional, as being an unlawful interference with the Federal Government, as well as an attempted exercise of sovereignty outside the jurisdiction of the said Commonwealth.

21. The allegations set forth in paragraph twenty-one of the complainant's petition are admitted.

22. The allegations set forth in paragraph twenty-two of the complainant's petition are admitted.

23. The allegations set forth in paragraph twenty-three of the complainant's petition are admitted.

24. The allegations set forth in paragraph twenty-four of the complainant's petition are admitted.

25. The allegation contained in paragraph twenty-five of complainant's petition is denied, in that the right to take property by escheat by any sovereign, is limited to the property within the domain of that sovereign, and when money is in the Treasury of the United States it is within the domain of the United States of America and cannot be escheated to the Commonwealth of Pennsylvania.

38 26. The allegation contained in paragraph twenty-six of the complainant's petition, wherein Section 5 of the Act of June 29th, 1935, is set forth, is admitted, but it is averred that said Act of the Commonwealth of Pennsylvania is unconstitutional, as being an unlawful interference with the Federal Courts and is an attempt by the Commonwealth of Pennsylvania to arrogate to itself jurisdiction over a matter outside and beyond its lawful jurisdiction.

(Sgd.) CHARLES D. McAVOY,
United States Attorney.

[*Duly sworn to by Charles D. McAvoy; jurat omitted in printing.*]

39 In Court of Common Pleas No. 5 of Philadelphia County

Statement of evidence

Before Hon. FRANK SMITH, P. J.

Present: Grover C. Ladner, Esq., For the Escheator, Commonwealth of Penna. Edward A. Kallick, Esq., Asst. United States District Attorney, For the United States Government. Theodore Voorhees, Esq., For the Pennsylvania Railroad Co.

Offers in evidence

Mr. LADNER. I desire to offer in evidence the following admissions as taken from the Answer of the United States to the Amendment Escheat Petition:

Paragraph No. 2—That portion of Paragraph No. 2, the Answer to which reads as follows: "For answer to the allegations contained in Paragraph No. 2 of the complainant's petition, it is admitted that the said Commission issued by Leon D. Metzger, Secretary of Revenue of the Commonwealth of Pennsylvania, gives full authority to the said Philip Klein, Escheator, to exercise all powers pertinent to his appointment."

Paragraph No. 3 of the Petition—the Amended Petition, as admitted in full: "3. That the moneys sought to be escheated as hereinafter set forth arise out of the proceeding instituted in the
40 United States District Court for the Eastern District of Pennsylvania by one Alice Frances Brown and others."

Paragraph No. 4 of the Amended Petition for Escheat as admitted in full: "4. That on May 2nd, 1911, a proceeding was filed in the United States District Court for the Eastern District of Pennsylvania as of April Sessions, 1911, No. 677 under the caption of Alice Frances Brown et al. v. Pennsylvania Canal Company, Pennsylvania Railroad Company, et al."

Paragraphs Nos. 5, 6, 7, 8, 9, 10, and 11 of the Amended Petition are all admitted in full by the Answer and are offered in evidence, as follows:

"5. That in the said proceeding a Bill of Complaint was filed by the plaintiff Alice Frances Brown setting forth that she was the owner of certain bonds issued by the Pennsylvania Canal Company, the said bonds being secured by a mortgage upon certain real estate of the Pennsylvania Canal Company; that she instituted this proceeding on behalf of herself and the owners of all the other bonds secured by the said mortgage; that the assets covered by the said mortgage had been improperly transferred to the Pennsylvania Railroad Company to the detriment of the bondholders; that the said assets were chargeable with the payment of the said bonds and that by reason of the conduct of the Pennsylvania Canal Company and the Pennsylvania Railroad Company, the latter company was bound to pay the principal of the said bonds; the Bill of Complaint provided for relief in the form of an order upon the Railroad Company to pay the said principal of the bonds to the owners thereof."

41 "6. That in pursuance of the prayer of the said Bill of Complaint, a Decree was entered by the Honorable Oliver B. Dickinson, Judge of said District Court against the Pennsylvania Railroad Company and in favor of the bondholders for the full amount of the said bonds."

"7. That by the terms of the said Decree it was provided that the bondholders should file their claims and that payment should then be made by the Pennsylvania Railroad Company."

"8. That in pursuance of the said Decree most of the owners of the said bonds filed their claims, but a number of bondholders failed to file."

"9. That a Master was appointed to determine the right to payment by virtue of the ownership of the said bonds and the Pennsylvania Railroad Company made payment to all claimants who filed."

"10. That the owners of a number of bonds issued by the Pennsylvania Canal Company could not be located after extensive search and advertising in various periodicals."

"11. That by reason of the fact that the owners of such bonds could not be found, the Court entered an order directing the payment of the moneys payable to the owners of such bonds into the Registry of the United States District Court for the Eastern District of Pennsylvania."

The following admission contained in Paragraph No. 12 of
42 the Answer is offered, which reads: "Further it is admitted that a petition was filed on behalf of the bondholders who had filed their claims asking for a division of the unallocated moneys amongst them."

Paragraph No. 13 of the amended Petition is offered in evidence, and is admitted in full: "13. That the Court entered a decree denying the prayer of the said petition, setting forth that the moneys allotted to each bond were the property of the owner of such bonds, and that the title thereto could not be divested in favor of the other bondholders or of the stockholders."

The following portion of Paragraph No. 14 of the amended Petition is offered in evidence, and is admitted in the corresponding paragraph of the Answer: "14. That after a lapse of five years, in accordance with the Act of Congress in such case made and provided (R. S. 51) the unclaimed moneys were deposited in accordance with the provisions of Section 851 of the said Revised Statutes to the credit of the Treasury of the United States."

The whole of Paragraph No. 15 of the amended Petition is offered in evidence, the same being admitted in the Answer; as is also Paragraph No. 16 of the amended Petition; also Paragraph No. 17 and Paragraph No. 18, as follows:

"15. That by Section 852 of the Revised Statutes, it is further provided that any person or corporation or company entitled to such money may on petition to the court from which the money was received and upon full proof of right thereto, obtain an order of court directing the payment of such money to the claimant."

43 ("16. That the Act of General Assembly of the Commonwealth of Pennsylvania, approved June 29th, 1935, states, 'Section II. Whenever any money, estate, or effects shall have been or shall hereafter be paid into or deposited in or be under the control . . . of any court of the United States in and for any District within this Commonwealth, or shall be in the custody of any depositary, registry or of any receiver, clerk or other officer of any of said courts,

and the rightful owner or owners thereof shall have been or shall be unknown for the space of seven years, the same shall escheat to the Commonwealth.'"

"17. That the decree of distribution in the said matter of Alice Frances Brown v. Penna. Canal Company was entered on October 4th, 1917; that the said moneys were paid into the Registry of the Court on the 22nd day of January, 1919."

"18. That after the prayer for distribution of the unclaimed balance among the bondholders was denied, the said moneys were deposited to the credit of the Treasury of the United States on June 30th, 1926."

Paragraph No. 19 of the amended Petition is offered in evidence, because Paragraph No. 19 of the Answer is not responsive: "19. That the said moneys have been unclaimed since the said date of decree of distribution on October 4th, 1917, and still remain unclaimed."

Paragraph No. 21 of the amended Petition is offered in evidence in full, being admitted by the Answer, as is also Paragraphs Nos. 22, 23, and 24:

44 "21. That on April 17th, 1934, the Commonwealth of Pennsylvania, by Philip Klein, Escheator, filed his Petition in the United States District Court for the Eastern District of Pennsylvania, as of March Term, 1934, No. 8123, praying for the escheat of the moneys hereinabove described, the said petition praying that the said Court enter a finding that an escheat of the said moneys has occurred and praying further for an order directing the payment of the said moneys to the Commonwealth of Pennsylvania."

"22. That due notice of the presentation of the said petition was given to the United States District Attorney for the Eastern District of Pennsylvania, and the said United States District Attorney filed an objection to the jurisdiction of the United States District Court."

"23. That on September 6th, 1934, the Honorable Oliver B. Dickinson, Judge of the United States District Court filed an Opinion setting forth that the said Court has no jurisdiction to enter a Decree declaring escheat of the said moneys."

"24. That on October 17th, 1934, the said Honorable Oliver B. Dickinson entered an order denying the prayer of the Commonwealth of Pennsylvania for the escheat of the said moneys, without prejudice."

Paragraph No. 25 of the amended Petition is offered in evidence because of the insufficient denial of the corresponding paragraph of the Answer: "25. That a decree of escheat is necessary in

45 order to enable your Petitioner to proceed further in the United States District Court to recover the moneys to which the Commonwealth of Pennsylvania is entitled by virtue of the facts hereinbefore set forth."

Paragraph No. 26 is offered in evidence, being admitted to be the correct statement of the Statute Law of the State of Pennsylvania,

although the Government of the United States avers that it is unconsitutional—that having been already adversely ruled upon by the Supreme Court.

"26. That the aforementioned Act of June 29th, 1935, provides further: 'Section V. Whenever an escheat has occurred or shall occur of any money or property deposited in the custody of or under the control of any Court of the United States in and for any District within this Commonwealth, or in the custody of any depositary, clerk or other officer of such court, the court of common pleas of the county in which such court of the United States sits shall have jurisdiction to ascertain if an escheat has occurred, and to enter a judgment or decree of escheat in favor of this Commonwealth."

I have subpoenaed the record of the United States District Court—the entire record; but the only relevant part is the part which I will call attention to—that is the Bill of Complaint filed in the case of Alice Frances Brown et al. v. Pennsylvania Canal Company, Samuel Rea, Pennsylvania Railroad Company, et al. In the District Court of the United States for the Eastern District of Pennsylvania, No. 677, April Session, 1911; the Decree that was filed pursuant to
46 that Bill on April 6th, 1916; the Mandate of the United States Circuit Court of Appeals affirming the Decree of the United States District Court in the Appeal of the Pennsylvania Canal Company, which is dated January 13th, 1917; the Decree of Distribution which was filed and dated October 4th, 1917; the Decree directing the Trustee to make certain payments and to deposit the balance of the money in the Registry of the Court which is dated December 19th, 1918; the Decree of August 17th, 1921, denying the Petition for Distribution of the balance of the fund in the Registry of the Court and refusing to confirm the Trustees' report, and allowing exceptions to the Petition as filed; the Mandate of the United States Circuit Court of Appeals affirming the said Decree of the United States District Court, dated March 28th, 1922.

I also offer in evidence the proof of publication in compliance with the decree of this Court notifying everybody of the application. That is already filed among the papers.

We think that completes the case.

Mr. Kallick. There is no objection to the offer.

Mr. Ladner. Before closing I will have the United States Clerk testify as to the exact balance on hand and unclaimed today.

W. H. Spann, being duly sworn according to law, was examined and testified as follows:

By Mr. Ladner:

Q. Your position is what?

A. Deputy Clerk, United States District Court.

47 Q. Are you able to tell us from the records of the United States District Court the amount of the unclaimed funds which are under the control of the Court, and which remain from

the amount originally deposited in the Registry in the Court, in the case of Alice Frances Brown et al. vs. Pennsylvania Canal Company, et al. No. 677 in Equity, April Sessions 1911?

A. On June 26th, 1926, there was paid into the Treasury of the United States the balance in the Registry of the Court, amounting to $18,650.75. Some time later, on March 30, 1936, there was a decree allowing payment to Sophie Jane Russell of $1,776.26, and I believe the balance in the Treasury is $16,874.49.

Q. That leaves how much?

A. $16,874.49.

Q. What is the date on the Petition of Sophie Jane Russell?

A. March 30th, 1936.

Q. That is when the petition was filed?

A. Yes.

Q. It was paid at what time?

A. Order to pay it was entered on the same date.

Q. The same date?

A. March 30th, 1936.

Q. Since that time there has been on further application by anybody for this money?

A. No, sir.

Q. That is by the owners?

A. No, sir.

Testimony closed.

48 Mr. VOORHEES. I represent the Pennsylvania Railroad Company, which is a claimant for this fund and we have filed a petition in the United States District Court for the payment of that fund to us.

The COURT. You are opposed to the escheat?

Mr. VOORHEES. We are opposed to the escheat and our petition will be heard on Monday, October 5th. We are not coming into this Court presenting our claim at this time because we have already submitted our claim to the Court which we recognize as having jurisdiction; but in order that this Court may know that the Federal Court is considering our petition we wanted to let you know so if you care to you will await the decision of the Federal Court before declaring the escheat here, because if the Federal Court is going to decide that we are the owners of the fund it probably would not recognize the decree of this Court escheating it in any case.

Mr. LADNER. The Pennsylvania Railroad Company filed a petition in the Supreme Court; they were heard at the argument and the Supreme Court says that this Court has jurisdiction to enter the decree. The effect and validity of that decree, whether it will operate to actually collect the money from the United States is an entirely different question, with which they say neither this Court nor any other State Court is concerned—that is a question for the Federal Court.

Mr. LADNER: So far as the original record of the United States District Court is concerned the Clerk is taking with him the original documents, and has left a certified copy of all the matters I have called attention to, with the exception of the Bill in Equity. I do not think the Bill itself is material so long as we have the decrees and the orders of the Court. These copies are certified and he asked if the stenographer would be permitted to copy from the certified copy instead of the originals, so that the originals might not pass out of his possession.

The COURT. Yes, that will be all right.

Offers in evidence

In the District Court of the United States for the Eastern District of Pennsylvania

ALICE FRANCES BROWN, ESTHER J. HASBROUCK, ALLISON W. JACKSON AND FRANK HASBROUCK, EXECUTORS OF THE LAST WILL AND TESTAMENT OF SERAPHINE R. JACKSON, DEC'D, AND ALLISON W. JACKSON, JAY COOKE, 3RD, EDWARD BAILEY AND JOHN CADWALADER

vs.

PENNSYLVANIA CANAL COMPANY, SAMUEL REA, PENNSYLVANIA RAILROAD COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, NORTHERN CENTRAL RAILWAY COMPANY, NORTHERN CENTRAL CONNECTING RAILROAD CO. AND HARRISBURG, PORTSMOUTH, MT. JOY & LANCASTER RAILROAD COMPANY.

No. 677. April Sess., 1911

DOCKET ENTRIES

1935

Dec. 10. Petition by Sophy Jane Russell for payment from Treasury of U. S. on account of certain bonds and Decree granting prayer of petition filed.

Dec. 14. Appearance of Cravath DeGersdorff, Swaine & Wood for Sophy Jane Russell, petitioner, filed.

1936

Mar. 30. Amended Decree to pay from U. S. Treasury certain claim filed (S. J. Russell).

July 31. Petition by Pennsylvania Railroad Company for Order directing payment to petitioner of money deposited in Treasury of United States filed.

Sept. 23. Petition of Commonwealth of Penna. for leave to intervene and Order of Court granting leave to file petition filed.

Sept. 24. Answer of United States to petition of Penna. Railroad Co. filed.

51 In the District Court of the United States for the Eastern District of Pennsylvania

ALICE FRANCES BROWN (PLAINTIFF) AND JAY COOKE, 3RD, EDWARD BAILEY AND JOHN CADWALADER (INTERVENING PLAINTIFFS)

vs.

PENNSYLVANIA CANAL COMPANY AND PENNSYLVANIA RAILROAD COMPANY (DEFENDANTS)

In Equity. April Sessions, 1911. No. 677

Decree

Filed Dec. 19, 1918

Before DICKINSON, *J.*

And now, to-wit: this 19th day of December 1918, it having been represented to the Court by supplemental report of David Wellerstein, Esq., Master, filed this day, that fifty-nine bonds of the Pennsylvania Canal Company, referred to in the decree of this Court dated November 14th, 1918, have not been presented to him and no information has been received as to their ownership and that five other of said bonds have been presented to him, but that formal proof of their ownership cannot be made until later, it is ordered, adjudged, and decreed as follows:

52 1. The order of the Court directing Samuel Rea, Trustee, to apply the balance of the fund remaining in his hands, after the payment of certain costs and charges as set forth in said decree of November 14th, 1918, to the payment of the principal of the said bonds of the Pennsylvania Canal Company, so far as the same shall have been proven before the Master, is hereby rescinded; and the said Samuel Rea, Trustee, is now ordered and directed to pay out of the said balance remaining in his hands (after providing for the payment of any additional expenses for advertising or other costs incurred by the Master) the sums which would be due to the holders of bonds who have presented the same to the Master and according to a schedule which the Master shall furnish him, in accordance with the said decree and this supplemental decree, as if the entire 1948 bonds outstanding had been proven so that each bondholder mentioned in said schedule will receive the amount he would have received had the entire number of said 1948 outstanding bonds been proven and had participated in the distribution.

2. The balance of the said fund remaining in his hands after making the payments aforesaid, the said Samuel Rea, Trustee, shall pay into this Court to be held subject to the further order of the Court, and thereafter the said Samuel Rea, Trustee, may file a report setting forth the above facts and praying for his discharge as the said Trustee.

3. The Master is ordered and directed to make such further advertisement and efforts to ascertain the location of the bonds
53 not yet proven as he may in his discretion determine and to make a further report to the Court not later than six months from this date. Except as modified by this supplemental decree the said decree of this Court of November 14th, 1918, is in all respects confirmed.

By the Court.

Attest:

(s) GEORGE BRODBECK, *Clerk.*

In the District Court of the United States for the Eastern District of Pennsylvania

ALICE FRANCES BROWN (PLAINTIFF) AND JAY COOKE, 3RD, EDWARD BAILEY AND JOHN CADWALADER (INTERVENING PLAINTIFFS)

v.

PENNSYLVANIA CANAL COMPANY AND PENNSYLVANIA RAILROAD COMPANY (DEFENDANTS)

In Equity. April Sessions, 1911. No. 677

Decree

And now, to-wit: this 17th day of August 1921, upon consideration of the petition of Alice Frances Brown, Jay Cooke, 3rd, Edward Bailey and John Cadwalader for the distribution of the balance of the fund remaining in the Registry of the Court to petitioners and other holders of 1916 bonds of the Pennsylvania Canal Com-
54 pany who have proved their bonds before the Master, and of the report of David Wallerstein, Esq., Master, recommending the distribution of the fund amounting to $31,476.24, after payment of the costs and expenses of the proceedings, to the petitioners and other holders of the 1916 bonds whose bonds have been heretofore proved, and the same having been fully argued by counsel, and the Court being of opinion that the holders of the said 1916 bonds who have proved their bonds before the Master are not entitled to share in said fund for the reasons set forth in the opinion heretofore filed, it is ordered, adjudged, and decreed that the petition for a decree awarding said fund to petitioners and other holders of the 1916 bonds of the Pennsylvania Canal Company who have proved their bonds before the Master, be and the same is hereby denied, and the motion to confirm the report of the Master be, and the same is hereby, refused, and exceptions are allowed to petitioners.

By the Court.

(Sgd.) DICKINSON, *J.*

In the District Court of the United States for the Eastern District of Pennsylvania Sitting in Equity

ALICE FRANCES BROWN

vs.

PENNSYLVANIA CANAL CO., ET AL.

Bill in Equity. No. 677. April Sessions, 1911

55 *Decree*

And now, April 6, 1916, the above cause having come on to be re-argued upon final hearing upon Bill, Answer and Proofs, it is, upon due consideration.

Ordered, adjudged, and decreed that the decree made as of March 13, 1916, is vacated and annulled and the following substituted therefor:

(1) There are now outstanding bonds of the Pennsylvania Canal Company of the issue referred to in the Bill of Complaint to the amount in par value of the sum $1,948,000.00.

(2) Of the above sum, bonds to the amount of $348,000.00 are held by and belong to the Pennsylvania Railroad Company. Bonds to the amount of $7,000.00 belong to and are held by Alice Frances Brown, the plaintiff. Bonds to the amount of $1,557,000.00 belong to and are held by others.

(3) The said bonds were due and payable July 1, 1910, and there is due thereon the said principal sum of $1,948,000.00 together with lawful interest thereon from July 1, 1910.

(4) The said Canal Company is without assets or property and is unable to pay said moneys or any part thereof.

(5) The loss sustained by said bondholders through the act of said Pennsylvania Railroad Company in causing moneys to be diverted from the Sinking Fund provided for the payment of
56 the principal of said bonds, and in causing the moneys in said Sinking Fund to be invested in the bonds of the Canal Company and then canceled amounted, on July 1, 1910, to the sum of $1,379,941.28.

(6) The said Pennsylvania Railroad Company is directed to pay to Samuel Rea, trustee for said bondholders, the said sum of $1,379,941.28 with interest thereon from July 1, 1910, the same, when so received, to be disbursed and distributed by him to and among the said Alice Frances Brown and the other holders of said bonds of the Canal Company as the Court shall direct.

(7) The said Pennsylvania Railroad Company is adjudged and directed to pay to said plaintiff her costs and the costs of this proceeding.

By the Court,

(sgd.) DICKINSON, *J.*

Filed April 6, 1916

In the District Court of the United States for the Eastern District of Pennsylvania

Alice Frances Brown (Plaintiff) and Jay Cooke, 3rd, Edward Bailey and John Cadwalader (Intervening Plaintiffs)

vs.

Pennsylvania Canal Company and Pennsylvania Railroad Company (Defendants)

In Equity. April Sessions, 1911. No. 677

57 *Decree*

Filed October 4, 1917

And now, to-wit: this Fourth day of October, 1917, Report of David Wallenstein, Esq., Master appointed by the Court as per order dated February 3rd, 1917, having been filed, upon due consideration of said Report and of the Exceptions thereto, it is ordered, adjudged, and decreed as follows:

1. Samuel Rea, Trustee, is ordered and directed to pay out of the fund in his hands in this cause to David Wallerstein, Esq., Master, the sum of $20,000.00 as a fee, and also to pay the costs of advertising the Master's appointment and stenographer's costs as the same may be certified to him by the Master.

2. Said Samuel Rea, Trustee, is hereby ordered and directed to pay out of the fund in his hands in this cause to Jay Cooke, 3rd, Edward Bailey and John Cadwalader, intervening plaintiffs, the sum of $2,406.87, being expenses and costs incurred by them.

3. Said Samuel Rea, Trustee, is hereby ordered and directed to pay out of the fund in his hands in this cause to Thomas Raeburn White, Esq., and John Cadwalader, Jr., Esq., counsel for Alice Frances Brown, plaintiff, and Jay Cooke, 3rd, Edward Bailey and John Cadwalader, intervening plaintiffs, the sum of $200,000.00, being the amount allowed by the Court out of the said fund as counsel fees for producing said fund.

58 4. The balance of the fund remaining in the hands of Samuel Rea, Trustee, after paying the sums hereinbefore mentioned, and after adding thereto the amount of interest actually received by him from the Girard Trust Company of Philadelphia, with whom the said fund is deposited by Samuel Rea, Trustee, shall be applied to the payment of the principal of 1948 bonds of the Pennsylvania Canal Company of the issue in question now outstanding so far as the same have been proved before the Master according to the schedule attached to his Report and modified by his supplemental Report.

5. The said Samuel Rea, Trustee, is ordered and directed, under the supervision of the Master, to pay over and distribute to the holder of each one of the said bonds which have been proven before the

Master, according to the schedule attached to his Report, 1/1948 part of the fund in his hands, after making deductions and adding interest as hereinbefore ordered, provided, however, that payment shall not be made to William Manderson, Jane Manderson and Francis S. Manderson upon bonds proved by them until they have delivered to the said Samuel Rea, Trustee, a bond in form approved by the Master and with surety satisfactory to the Master conditioned for the repayment to the said Samuel Rea, Trustee, of the distributive share paid to the said Jane Manderson and Francis S. Manderson, in accordance with the Report of the Master.

6. The Master shall notify by registered mail the holders of each of the said bonds to whom distribution is directed to be made,
59 that they shall present their bond or bonds to the said Master for payment on the day fixed in the said notice, not less than five days after the mailing of the said notice; upon presentation of the said bonds the Master shall stamp upon each of the said bonds the actual amount to be paid upon each of the said bonds, and thereupon the said Samuel Rea, Trustee, shall pay to the holder of each of the bonds the amount so stamped, and said bonds shall be returned to the respective holders thereof.

7. The said Samuel Rea, Trustee, shall hold the balance of the fund remaining in his hands after such distribution, until further order of Court.

8. The Master is hereby ordered and directed to cause an advertisement to be inserted in the following newspapers: Public Ledger and Evening Bulletin and also in the Legal Intelligencer, once a week for three weeks, in such form as he shall deem proper, notifying all holders of the Pennsylvania Canal Company bonds of the issue in question who have not yet made proof of their claim, to present said bonds and make proof of ownership thereof to the Master on or before a day fixed in said advertisement, and said day to be not less than two weeks after the date of the last advertisement; or otherwise be forever barred from sharing in the fund in the hands of the said Samuel Rea, Trustee, or from making any claim thereon.

9. Within a reasonable time after the date fixed for the proving of such bonds as are not yet proved, the Master shall make a report to the Court.

(s) DICKINSON, *J.*

60 Certified Copy. D. C. Form No. 30

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania ss:

I, George Brodbeck, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of * * * that portion of the docket entries including December 10th, 1935, to September 24, 1936, Decree filed April 6, 1916, Decree filed October

4, 1917, Decree filed December 19, 1918, and Decree filed August 17, 1921, in the case of Alice Frances Brown (Plaintiff) and Jay Cooke, 3rd, Edward Bailey and John Cadwalader (Intervening Plaintiffs) vs. Pennsylvania Canal Company and Pennsylvania Railroad Company (Defendants) No. 677, April Sessions, 1911 * * * now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the sale of the aforesaid Court at Philadelphia this thirtieth day of September, A. D. 1936.

GEORGE BRODBECK, *Clerk 1.*
By (Signature illegible),
Deputy Clerk.

[Seal of the District Court of the United States.]

61 In Court of Common Pleas No. 5 of Philadelphia County

Decree of escheat

And now, to wit, this 1st day of October, 1936, this cause having come on before the Court, for hearing on Amended Petition for Escheat of certain moneys, and upon the answer thereto of the United States of America, and all other proceedings, and after hearing duly had, upon notice duly given, in accordance with the order of the Court, to all parties in interest,

It Is Ordered and Decreed that

Whereas, in the matter of Alice Frances Brown et al. v. Pennsylvania Canal Company et al. No. 677 in equity of the United States District Court for the Eastern District of Pennsylvania, moneys in the amount of $16,874.49 were paid into the Registry of the United States District Court for the Eastern District of Pennsylvania on January 22, 1919 and

Whereas, thereafter on June 26, 1926, these moneys were deposited to the credit of the Treasury of the United States, subject to the order of the Court from which the said moneys were received, to wit, the aforementioned United States District Court for the Eastern District of Pennsylvania, under the provisions of the Act of Congress of March 3, 1911, C. 224, Revised Statutes 996; 36 Statutes 1083, 28 United States Code 852, and

Whereas the original owners of the said moneys have been unknown for a space of seven years and more, the said sum of $16,-

874.49 is Hereby Declared Escheated to the Commonwealth of

62 Pennsylvania, and Philip Klein, Escheator, duly appointed under the laws of the Commonwealth of Pennsylvania to prosecute the claim of the Commonwealth of Pennsylvania to these moneys, is hereby directed to make application to the United States District Court for the Eastern District of Pennsylvania for an Order by the said Court directing the payment of the said moneys to the

said Philip Klein as Escheator of the Commonwealth of Pennsylvania in accordance with the Acts of Congress in such case made and provided.

By the Court,

(Sgd.) FRANK SMITH, *J.*

In Court of Common Pleas

Petition for rehearing

To the Honorable, the Judges of the said Court:

The Petition of the United States of America, by J. Cullen Ganey, Assistant United States Attorney for the Eastern District of Pennsylvania, respectfully represents:

1. That on the 1 day of October 1936, a hearing was had by your Honorable Court on the Petition of Philip Klein, Escheator of the Commonwealth of Pennsylvania, to which answer was made by the United States of America, wherein the said Philip Klein prayer for a judgment of escheat.

2. That after hearing on the first day of October 1936,
63 your Honorable Court allowed the prayer of the Petitioner and decreed a judgment of escheat in the sum of $16,874.49.

3. Your Petitioner is advised, believes and therefore avers that there is additional evidence essential to the proper consideration of the cause of the United States Government, which should be presented to your Honorable Court in order that the interests of the United States of America may be properly protected.

Wherefore, your Petitioner prays that it be granted a rehearing of the cause at which time additional evidence of the United States Government may be considered. And your Petitioner will ever pray.

J. CULLEN GANEY,
Assistant United States Attorney.

[Duly sworn to by J. Cullen Ganey, jurat omitted in printing.]

64 *Rule to show cause*

And Now, to wit: this 23 day of November 1936, upon consideration of the within Petition, a Rule is entered on Philip Klein, Escheator of the Commonwealth of Pennsylvania, to show cause why the Order granted October 1st, 1936, in the above mentioned case should not be set aside and rehearing held.

Returnable 30 day of Nov. 1936. 10 a. m. Room K.

All proceedings to stay in the meanwhile.

SMITH, *J.*

Order

Dec. 16, 1936. Rule absolute insofar as it applies to a rehearing.

In Court of Common Pleas No. 5 of Philadelphia County

Final decree

And now, to wit, this 8th day of January 1937, this cause having come on before the Court for rehearing on Petition of the United States Attorney, and after rehearing duly had,

It Is Ordered that the decree entered by this Court on October 1, 1936, be reaffirmed as follows:

It is Ordered and Decreed that

65 Whereas, in the matter of Alice Francis Brown et al. v. Pennsylvania Canal Company et al., No. 677 in equity, of the United States District Court for the Eastern District of Pennsylvania, moneys in the amount of $16,874.49 were paid into the Registry of the United States District Court for the Eastern District of Pennsylvania on January 22, 1919, and

Whereas, thereafter, on June 26, 1936, these moneys were deposited to the credit of the Treasury of the United States, subject to the order of the Court from which the said moneys were received, to wit, the aforementioned United States District Court for the Eastern District of Pennsylvania, under the provisions of the Act of Congress of March 3, 1911, C. 224, Revised Statutes 996; 36 Statutes 1083, 28 United States Code 852, and

Whereas, the original owners of the said moneys have been unknown for a space of seven years and more, the said sum of $16,874.49 Is Hereby Declared Escheated to the Commonwealth of Pennsylvania, and Philip Klein, Escheator, duly appointed under the laws of the Commonwealth of Pennsylvania to prosecute the claim of the Commonwealth of Pennsylvania to these moneys, is hereby directed to make application to the United States District Court for the Eastern District of Pennsylvania for an Order by the said Court directing the payment of the said moneys to the said Philip Klein as Escheator of the Commonwealth of Pennsylvania in accordance with the Acts of Congress in such case made and provided.

By the Court.

ALESSANDRONI, *J.*

66 In Court of Common Pleas

Exception to decree of the court

And Now, this 3rd day of February, 1937, the United States of America, by Charles D. McAvoy, United States Attorney for the Eastern District, excepts to the decree of the Court entered Janu-

ary 8, 1937, reaffirming the decree of Escheat entered by the Court on October 1, 1936, which is as follows:

"It is ordered and decreed that

"Whereas, in the matter of Alice Frances Brown et al. v. Pennsylvania Canal Company et al., No. 677, in equity, of the United States District Court for the Eastern District of Pennsylvania, moneys in the amount of $16,874.49 were paid into the Registry of the United States District Court for the Eastern District of Pennsylvania on January 22, 1919, and

"Whereas, thereafter, on June 26, 1936, these moneys were deposited to the credit of the Treasury of the United States, subject to the order of the Court from which the said moneys were received, to wit, the aforementioned United States District Court for the Eastern District of Pennsylvania, under the provisions of the Act of Congress of March 3, 1911, C. 224, Revised Statutes 996; 36 Statutes 1083, 28 United States Code, 852, and

"Whereas, the original owners of the said moneys have been unknown for a space of seven years and more, the said sum of $16,874.49 is hereby declared escheated to the Commonwealth of Pennsylvania, and Philip Klein, Escheator, duly appointed under the laws of the Commonwealth of Pennsylvania to Prosecute the claim of the Commonwealth of Pennsylvania to these moneys, is hereby directed to make application to the United States District Court for the Eastern District of Pennsylvania for an Order by the said Court directing the payment of the said moneys to the said Philip Klein as Escheator of the Commonwealth of Pennsylvania in accordance with the Acts of Congress in such case made and provided.

By the Court.

ALESSANDRONI, *J.*
CHARLES D. MCAVOY,
United States Attorney.

And Now, this 3rd day of February 1937, exception is allowed.

ALESSANDRONI, *J.*

In Supreme Court of Pennsylvania

January Term, 1937

Docket entries

Grover C. Ladner, A. Jere Creskoff. 2-8-37. Chas. D. McAvoy, U. S. Attorney. J. Cullen Ganey, Asst. U. S. Atty. In the Matter of: Escheat of Money in the Custody of the U. S. Treasury, Appeal of: U. S. of America. No. 1820, December Term, 1934, from the Decree. In Equity.

Appeal from Court Common Pleas #5 of the County of Philadelphia, Filed February 4, 1937, Eo die Certiorari exit, Retbls. third Monday April, 1937.

February 15, 1937. Record returned and filed.
April 14, 1937. Assignments of Error filed.
April 21, 1937. Argued.
May 17, 1937. Decree as stated, affirmed.
Per Curiam.
May 28, 1937. Remittitur exit and with record sent to: Prothonotary of Philadelphia County.
Eo die Acknowledgment of Remittitur and record received and filed.
August 14, 1937. Petition for Appeal to the Supreme Court of the United States received in this office.
August 14, 1937. Statement of Jurisdiction received in this office.
August 14, 1937. Assignments of Error received in this office.
August 14, 1937. Order allowing appeal to the Supreme Court of the United States, received in this office as follows:
Ordered and Adjudged that the appellant herein, the United States of America, be and it is hereby allowed an appeal from the order and judgment of this Court affirming the judgment of the Court of Common Pleas No. 5 of Philadelphia County, and that a duly certified copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States.
It is further—
Ordered, that the United States of America be and it is hereby permitted a period of 40 days from the date hereof in which to file and docket this appeal to the Supreme Court of the United States.
This the 14th day of August 1937.

(Signed) Owen J. Roberts,
Associate Justice of the Supreme Court of the United States.

69 August 17, 1937. Affidavit of Service of Petition for Allowance of Appeal to the Supreme Court of the United States, copy of Assignments of Error and copy of Statement, etc., filed.

Thomas J. Curtin.

August 28, 1937. Citation, signed by Justice Owen J. Roberts, received in this office and filed.
September 2, 1937. Motion to dismiss appeal or to confirm decree of the Court below and Appellee's Statement of Grounds making against jurisdiction of Supreme Court of the United States, received in this office and filed.
September 13, 1937. Praecipe for Record, with acceptance of service, received in this office, and filed.

70 In Supreme Court of Pennsylvania for the Eastern District

[Title omitted.]

Appeal and affidavit

Filed Feb. 4, 1937

Enter appeal on behalf of U. S. of America from the Decree of the Court of Common Pleas of the County of Philadelphia Returnable:

(Signed) CHAS. D. McAVOY,
U. S. Attorney.
(Signed) J. CULLEN GANEY,
Asst. U. S. Atty.,
Attorneys for Appellant.

To Thomas Robins, Prothonotary Supreme Court—Eastern District, County of Philadelphia, *ss:*

J. Cullen Ganey, being duly sworn, saith that said Appeal is not taken for the purpose of delay, but because Appellant believes it has suffered injustice by the decree from which appeal.

Sworn and subscribed this 4th day of Feb. A. D. 1937.

[SEAL] J. CULLEN GANEY.
(Signed) MAY C. REESE, *Chief Clerk.*

[File endorsement omitted.]

11 In Supreme Court of Pennsylvania, Eastern District
[Title omitted.]

Assignment of error

Filed April 14, 1937

The United States of America, by Guy K. Bard, United States Attorney in and for the Eastern District of Pennsylvania, and Thomas J. Curtin, Assistant United States Attorney for said District, respondent below files the following Assignment of Error:

1. The Court erred in entering its Decree of Escheat (R. p. 64a).

"And Now, to wit, this 8th day of January, 1937, this cause having come on before the Court for rehearing on Petition of the United States Attorney, and after rehearing duly had,

"It is Ordered that the decree entered by this Court on October 1, 1936, be reaffirmed as follows:

"It Is Ordered and Decreed that

"Whereas, in the matter of Alice Frances Brown et al. v. Pennsylvania Canal Company et al. No. 677 in equity, of the United States District Court for the Eastern District of Pennsylvania, moneys in the amount of $16,874.49 were paid into the Registry of the United States District Court for the Eastern District of Pennsylvania on January 22, 1919, and

"Whereas, thereafter, on June 26, 1936, these moneys were deposited to the credit of the Treasury of the United States, subject

to the order of the Court from which the said mone
72 were received, to wit, the aforementioned United States D
trict Court for the Eastern District of Pennsylvania, und
the provisions of the Act of Congress of March 3, 1911, C 224, E
vised Statutes 996; 36 Statutes 1083, 28 United States Code 852, a

"Whereas, the original owners of the said moneys have been u
known for a space of seven years and more, the said sum of $16,874.
Is Hereby Declared Escheated to the Commonwealth of Pennsy
vania, and Philip Klein, Escheator, duly appointed under the la
of the Commonwealth of Pennsylvania to prosecute the claim of t
Commonwealth of Pennsylvania to these moneys, is hereby directed
make application to the United States District Court for the Easte
District of Pennsylvania for an Order by the *the* said Court dire
ing the payment of the said moneys to the said Philip Klein
Escheator of the Commonwealth of Pennsylvania in accordance wi
the acts of Congress in such case made and provided.

"By the Court,

"ALESSANDRONI, *J.*"

on the ground that the State Statute is unconstitutional in that:

(a) It constitutes an interference with the Federal Courts.

(b) It is an unlawful attempt on the part of the General Assemb
of the Commonwealth of Pennsylvania to exercise sovereignty ou
side the jurisdiction of the State.

(c) It is an unwarranted infringement on the sovereignty pow
of the United States of America.

(Signed) Guy K. Bard,
GUY K. BARD,
United States Attorney.

(Signed) Thomas J. Curtin,
THOMAS J. CURTIN,
Assistant United States Attorney.

[File endorsement omitted.]

73 In Supreme Court of Pennsylvania, Eastern District

[Title omitted.]

Notice of appeal

Filed Feb. 8, 1937

To Appellee or his Counsel:

You are hereby notified that on Feb. 3, 1937, an appeal was tak
to the Supreme Court in the above-entitled case.

(Signed) CHARLES D. MCAVOY,
U. S. Atty.

(Signed) J. CULLEN GANEY,
Asst. U. S. Atty.
Attorneys for Appellant.

Feb. 5th, 1937, service of the foregoing notice is hereby accepted and the Prothonotary of the Supreme Court is directed to enter the appearance of the undersigned for the appellee.

(Signed) GROVER C. LADNER.
(Signed) A. JERE CRESKOFF.

NOTE.—Please return this acceptance of service to Room 456, City Hall. Attention is also called to the following rule, especially so much thereof as refers to filing proof of service of notices in the court below:

Rule 58. Immediately upon taking his appeal appellant shall serve notice thereof on the opposite party or his counsel; on the stenographer who took the testimony, if the official transcript thereof has not been filed; also on the judge who made any ruling or rendered any order, judgment, or decree, of which appellant complains and the reasons for which do not already appear of record; and shall promptly file in the court below proof of the service of such notices. A failure to comply with this rule and promptly to serve notice on the court below, with a concise statement of the matters complained of and regarding which it is alleged the reasons therefor do not appear of record, may be considered as a waiver of all objections to the ruling, order, judgment, or decree in question. On receipt of the notice here required, the official stenographer shall forthwith proceed to have his notes transcribed, approved and filed, and the court below shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the ruling, order, judgment, or decree therein referred to, or shall specify in writing the place in the record where such reasons may be found, and this opinion or writing shall be attached to the record and printed as part thereof.

[File endorsement omitted.]

74 In Supreme Court of Pennsylvania, Eastern District

No. 164, January Term, 1937

IN THE MATTER OF ESCHEAT OF MONEYS IN CUSTODY OF UNITED STATES TREASURY. APPEAL OF UNITED STATES OF AMERICA

Appeal From Decree of Court of Common Pleas No. 5 of Philadelphia County

Opinion of the court

Filed May 17, 1937

PER CURIAM:

The previous history of this deposit is set forth in In re Escheat of Monies in Custody of U. S. Treasurer, 322 Pa. 481. We there held that the court below had jurisdiction to decide under State laws the

ownership of the fund and the record was remanded to determ whether or not the money was escheated.

This appeal restates the arguments of the United States agai the jurisdiction of the court below. Since no new matter is p sented, we affirm so much of the decree of the court as follows:

"Whereas, in the matter of Alice Frances Brown et al. v. Penns vania Canal Company et al., No. 677 in equity, of the United Sta District Court for the Eastern District of Pennsylvania, moneys the amount of $16,874.49 were paid into the Registry of the Uni States District Court for the Eastern District of Pennsylvania January 22, 1919, and

"Whereas, thereafter, on June 26, 1936, these moneys were dep ited to the credit of the Treasury of the United States, subject to order of the Court from which the said moneys were received, wit, the aforementioned United States District Court for the East District of Pennsylvania, under the provisions of the Act of C gress of March 3, 1911, C. 224, Revised Statutes 996; 36 Statu 1083, 28 United States Code 852, and

"Whereas, the original owners of the said moneys have b unknown for a space of seven years and more, the said sum $16,874.49 is hereby declared escheated to the Commonwealth Pennsylvania, and Philip Klein, Escheator, duly appoin under the laws of the Commonwealth of Pennsylvania to pro cute the claim of the Commonwealth of Pennsylvania to th moneys * * *."

Decree as stated affirmed.

75 In Supreme Court of Pennsylvania

[Title omitted.]

Acknowledgment of receipt of remittitur, etc.

Filed May 28, 1937

May 28 1937, received from the Supreme Court of Pennsylvan Eastern District, the record, remittitur and copy of the opinion of Court, in the above entitled case.

(Signed) H. G. Hoerr

[File endorsement omitted.]

76 In Supreme Court of Pennsylvania, Eastern District

[Title omitted.]

Petition for appeal to the Supreme Court of the United State

Filed Aug. 14, 1937

Comes now the United States of America, appellant herein, s states that on the 17th day of May 1937, the decision of the Court

Common Pleas No. 5 of Philadelphia County decreeing the escheat of certain moneys in the Treasury of the United States was by this Court sustained, and the United States, feeling aggrieved at the ruling of this Court affirming said decree, prays that it may be allowed to appeal to the Supreme Court of the United States for reversal of the judgment order, and that a transcript of the record in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

The petitioner submits and presents to the Court herewith a statement showing the basis and jurisdiction of the Supreme Court to entertain an appeal in this cause.

J. Cullen Ganey,
J. CULLEN GANEY,
United States Attorney for the
Eastern District of Pennsylvania.

[File endorsement omitted.]

87 [Opinion, Linn, J., omitted. Printed side page. 27 ante.]

101 In Supreme Court of Pennsylvania, Eastern District.

[Title omitted.]

Assignment of errors

Filed Aug. 14, 1937

Comes now the United States of America, by J. Cullen Ganey, United States Attorney for the Eastern District of Pennsylvania, and avers that in the record proceedings and judgment herein there is manifest error against the just right of the appellant, and that the Court erred:

1. In holding that the escheat laws of the State of Pennsylvania, as amended by the acts of May 16, 1935, and June 28, 1935, providing for the escheat of moneys or property deposited in the custody of or under the control of any court of the United States in and for any district within the State of Pennsylvania was constitutional.

2. In failing to hold that such laws were unconstitutional because they constituted an interference with courts of the United States.

3. In failing to hold that the acts were unconstitutional because they constituted an unwaranted infringement on the sovereign power of the United States of America.

102 4. In failing to hold that the acts constituted an unlawful attempt to exercise sovereignty outside the jurisdiction of the State of Pennsylvania contrary to the Fourteenth Amendment to the Constitution of the United States.

5. In holding that the acts conferred jurisdiction to escheat money in the Treasury of the United States.

6. In affirming the judgment and decree of the Court of Common Pleas No. 5, Philadelphia County.

This 14 day of August, A. D. 1937.

J. Cullen Ganey,
J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania.

103 [File endorsement omitted.]

104 In Supreme Court of Pennsylvania, Eastern District

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States.

Filed Aug. 14, 1937

This cause having come on this 14th day of August, 1937, before this Court on the petition of the United States of America, appellant in the above-entitled cause, praying an appeal to the Supreme Court of the United States for reversal of the judgment herein affirming the judgment and decree of the Court of Common Pleas No. 5 of Philadelphia County and that a duly certified copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered this motion, together with appellant's statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain an appeal in this cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court—

Ordered and adjudged that the appellant herein, the United States of America, be and it is hereby allowed an appeal from the order and judgment of this Court affirming the judgment of the Court of Common Pleas No. 5 of Philadelphia County, and that a duly certified copy of the record of this cause be transmitted to
105 the Clerk of the Supreme Court of the United States. It is further—

Ordered that the United States of America be and it is hereby permitted a period of 40 days from the date hereof in which to file and docket this appeal to the Supreme Court of the United States.

This the 14th day of August, 1937.

OWEN J. ROBERTS,
Associate Justice of the Supreme Court of the United States.

106 [File endorsement omitted.]

[Citation in usual form omitted in printing.]

In Supreme Court of Pennsylvania, Eastern District

[Title omitted.]

Praecipe for record

Filed Sept. 13, 1937

To the PROTHONOTARY,
Supreme Court of Pennsylvania.

SIR: You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to appeal allowed in the above entitled cause, and to include in such transcript of record the printed record as presented for argument in said cause, the docket entries of the Supreme Court of Pennsylvania, and all papers filed in that Court.

(Signed) J. CULLEN GANEY,
United States Attorney.
(Signed) THOMAS J. CURTIN,
Assistant United States Attorney.

Service of the above Praecipe is hereby acknowledged.

(Signed) A. JEFF CRESKOFF,
Attorney for Appellees.

Date 9-13-37.

[File endorsement omitted.]

[Prothonotary's certificate to foregoing transcript omitted in printing.]

[Certificate of Chief Justice to prothonotary omitted in printing.]

[Prothonotary's certificate to Chief Justice omitted in printing.]

In Supreme Court of the United States

Statement of points relied upon and designation of entire record for printing

Filed Oct. 16, 1937

Pursuant to Rule 13, Par. 9 of this Court, the Appellant states that it intends to rely on all of the points in its assignment of errors.

The appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

Stanley Reed,
STANLEY REED,
Solicitor General.

Service of Statement of Points acknowledged.

A. JERE CREEKOFF,
Of Counsel for Appellee.

[File endorsement omitted.]

(Endorsement on cover:) File No. 41,920. Pennsylvania Supreme Court. Term No. 439. The United States of America, Appellant v. Philip Klein, Escheator of the Commonwealth of Pennsylvania. Filed September 20, 1937. Term No. 439 O. T. 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1